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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/001,903	11/15/2001	David T. King	AC193/2000	8985
7590	11/10/2003		EXAMINER	
DARRITHERS LAW OFFICE One Paragon Centre Suite 140 6060 Dutchman's Lane Louisville, KY 40205				HARTMANN, GARY S
		ART UNIT		PAPER NUMBER
		3671		
DATE MAILED: 11/10/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/001,903	KING, DAVID T.
	Examiner	Art Unit
	Gary Hartmann	3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 21 August 2003.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-51 is/are pending in the application.
  - 4a) Of the above claim(s) 9, 16 and 20-51 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-8, 10, 11, 13-15 and 17-19 is/are rejected.
- 7) Claim(s) 12 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 10 and 14 are objected to because the second medial wall (claim 10, line 6) lacks proper antecedent basis, and "operable" (claim 14, line 2) should be --operably--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 5-8, 10, 13-15, 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Edmunds, III et al. (U.S. Patent 6,179,273). Edmunds, III et al. discloses a spacer block having a pair of spaced apart side walls (40, 50) with top and bottom panels (60, 68) collectively forming a generally rectangular block (Figures 1-4). There is a mounting bore (90). Regarding the limitations of engagement mechanism and resting mechanism, these terms are deemed to be met since the block engages a post and supports a guardrail thereon.

There are medial walls (Figure 1, for example).

The mounting bore extends through medial walls and faces of the block.

The medial walls meet the limitations of reinforcement/webbing structure.

The bottom wall meets the limitation of a tab.

The first face is a generally flat solid surface.

The block could have been formed by injection molding. Note that this method step does not further limit an apparatus claim.

4. Claims 1, 5-8, 10, 13, 15 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Ernsberger (U.S. Patent 6,168,346). Ernsberger discloses a spacer block having a pair of spaced apart side, top and bottom panels (9a) collectively forming a generally rectangular block (Figures 2 and 3). There is a mounting bore (17). Regarding the limitations of engagement mechanism and resting mechanism, these terms are deemed to be met since the block engages a post and supports a guardrail thereon.

There are medial walls (Figure 3, for example).

The mounting bore extends through medial walls and faces of the block.

The medial walls meet the limitations of reinforcement/webbing structure.

The bottom wall meets the limitation of a tab.

The first face is a generally flat solid surface.

The block could have been formed by injection molding.

#### *Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2-4 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Edmunds, III et al. or Ernsberger as applied above, and further in view of Glaesener (U.S. Patent

3,704,861). Glaesener teaches the claimed materials of construction. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the materials of Glaesener with the blocks of Edmunds, III et al. or Ernsberger in order to obtain an impact absorbing structure, as taught by Glaesener.

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Edmunds, III et al. or Ernsberger as applied above, and further in view of Hubbell (U.S. Patent 6,561,492). Hubbell teaches a block having a tab (20) operably engaging a top panel of a spacer block and extending beyond the second face thereof (Figure 3, for example). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the tab of Hubbell with the block of either Edmunds, III et al. or Ernsberger in order to further stiffen the structure, as taught by Hubbell.

8. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ernsberger as applied above, and further in view of Marinelli (U.S. Patent 6,0074,269). Marinelli teaches a tab (22) projecting past the rear face of a block for engaging a post (Figure 1, for example). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the tab of Marinelli with the blocks of Ernsberger in order to obtain a more secure connection between the post and the block.

***Allowable Subject Matter***

9. Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

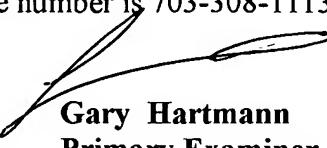
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Hartmann whose telephone number is 703-305-4549. The examiner can normally be reached on Monday through Friday, 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

gh



Gary Hartmann  
Primary Examiner  
Art Unit 3671